IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 22368 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DEVKARANBHAI RAMJI PRAJAPATI & 1 - Petitioner(s)
Versus
THE STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR UMANG K CHOKSI for Petitioner(s) : 1,MR JAGAT K CHOKSI for Petitioner(s) : 1,
MR AA DAVE, AGP for Respondents

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CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 13/12/2007

ORAL JUDGMENT

1. Rule. Mr.A.A.Dave, learned AGP waives service of rule on behalf of the respondents.

2. By way of this petition, the present petitioner has challenged the impugned order passed dated by respondent No.3, Dy.Collector, Stamp Duty, Palanpur dated 30.12.2003 and the orders passed by the respondent No.2 dated 21.1.2006 and 10.7.2007 rejecting the appeal of the on the ground that the petitioners have paid deficit stamp duty.

3. Heard learned advocate for the petitioners and and Mr A.A. Dave, learned AGP for the respondents.

3. It is submitted by the learned advocate for the petitioner that without giving any details regarding determination of market value, in printed form, order was passed by the Dy. Collector, Stamp Duty, Palanpur in a casual manner. It is submitted by him that after taking into consideration certain principles regarding determining the market value of the land, he has passed the impugned order on the basis of which the respondent No.3 has valued the property in question at much higher rate and therefore, deficit Stamp Duty of Rs.29,770/- and fine of Rs.250/- was required to be paid to the authorities. It is alleged that a Notice was sent to

the petitioner on 12.3.2003, which according to the petitioner has been received belatedly. However, the petitioner came to know about such notice being issued, preferred an appeal which was dismissed by the authority concerned on 20.1.2006 in printed format by filling up certain gaps. It is submitted that the respondent authority has not considered the fact that the petitioner has purchased the land in question at the market value and the authority has not considered the market value as per Jantri decided by the State. Therefore, it is prayed that the orders of the respondent authorities are required to be quashed and set aside.

4. In support of his submission, the Learned advocate has placed reliance on the following decisions of this court:

(1) 2003 (1) GLR 454 vol.44 (Pradhyaumanbhai Mohanlal Patel v. State of Gujarat

(2) 2006 (3) GLR 2252 (Mayurkumar J Patel v. Dy.Collector, Stamp Duty Valuation Department, Rajkot)

In the above decisions, it is held by this court that without giving any reasons and without applying mind towards any of the defences raised by

the petitioner therein, in printed format the impugned order has been passed wherein some gaps have been filled in and one and two sentences have been added. It is also held by this court that it is the duty vested in the respondent authorities to justify its say for higher market value for the land in question, and thus, the order in question was quashed and set aside by the court in the aforesaid decision.

5. The respondent Collector has passed order on 12.3.2003. Against the same, the appeal preferred by the petitioner was rejected by the Appellate Authority on 10.7.2007 on the ground that the petitioner has deposited 25% of the deficit stamp duty only and delay in filing the appeal.

6. Considering the facts and circumstances of the case, it is apparent that the impugned orders are in printed form and only some gaps have been filled up by the authorities without giving any reasons. This clearly shows total non-application of mind on the part of the respondent- Authorities. Even the delay occurred in filing the appeal will also not come in the way of the petitioners. Under these

circumstances, the impugned orders are required to be quashed and set aside.

7. In the result, the petition is allowed. The impugned order dated 30.10.2003 passed by the respondent No.3 Dy.Collector, Stamp Duty Valuation Department, Banaskantha, and the order dated 20.1.2006 and 10.7.2007 passed by respondent No.2, the Chief Revenue Controlling Officer, are quashed and set aside. Consequently, the matter is remanded to respondent No.3 for taking fresh decision and for passing a speaking order as per the Act, after giving an opportunity of being heard to the petitioner. Respondent No.3 is directed to dispose of the matter accordingly, within a period of three months from the date of receipt of the writ of this order.

Rule is made absolute to the aforesaid extent. No order as to costs.

[M.D. SHAH, J.]

Sreeram.